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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

FELTON A. SPEARS, JR. and SIDNEY
 SCHOLL, on behalf of themselves and all
 others similarly situated,

Plaintiffs,

v.

WASHINGTON MUTUAL, INC., a
 Washington corporation; WASHINGTON
 MUTUAL BANK, FA (aka WASHINGTON
 MUTUAL BANK); FIRST AMERICAN
 EAPPRAISEIT, a Delaware corporation;
 and LENDER'S SERVICE, INC.,

Defendants.

CASE NO.: 5:08-CV-00868 (RMW)

CLASS ACTION

**AFFIDAVIT OF JOSEPH N. KRAVEC, JR.
 IN SUPPORT OF PLAINTIFFS'
 MEMORANDUM IN OPPOSITION TO
 DEFENDANTS' MOTIONS TO DISMISS**

1 JOSEPH N. KRAVEC, JR., of full age, upon his affidavit, hereby certifies as follows:

2 1. I am an attorney at law of the Commonwealth of Pennsylvania, and have been admitted
3 *pro hac vice* to the referenced action. I am a partner with the law firm Specter Specter Evans &
4 Manogue, P.C., attorneys for Plaintiffs in the above-captioned matter. As such, I have personal
5 knowledge of the facts contained herein.

6 2. I make this affidavit in support of Plaintiffs Responses in Opposition to Defendants'
7 Washington Mutual Bank's and First American eAppraiseIT's Motions to Dismiss, and Lender's
8 Services, Inc.'s Motion to Dismiss.


9 3. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff Sidney Scholl's
10 Settlement Statement which was attached as Exhibit 1 action to Plaintiffs' original Class Action
11 Complaint filed in this action, and which is specifically identified in Plaintiffs' First Amended
12 Complaint at paragraph 58.

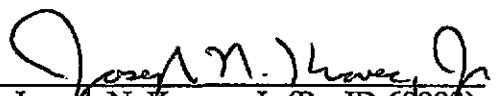
13 4. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff Sidney Scholl's
14 "Appraisal of Real Property" which was attached as Exhibit 2 to Plaintiffs' original Class Action
15 Complaint filed in this action, and which is specifically identified in Plaintiffs' First Amended
16 Complaint at paragraph 59 and identified as Plaintiff Scholl's "appraisal report."

17 5. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff Felton A. Spears'
18 Closing Statement which was attached as Exhibit 3 to Plaintiffs' original Class Action Complaint filed
19 in this action, and which is specifically identified in Plaintiffs' First Amended Complaint at paragraph
20 63.

21 6. Attached hereto as Exhibit 4 is a true and correct copy of the Court's decision in
22 *Chamberlan v. Ford Motor Company*, No. C 03-2628 CW (N.D. Cal., August 3, 2003)(Wilken, D.J.)

23
24
25 SWORN TO AND SUBSCRIBED BEFORE
26 ME THIS 25th DAY OF JUNE, 2008.

27 
28 Notary Public


Joseph N. Kravec, Jr. (Pa. ID 68992)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Anita M. Terry, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Oct 11, 2009
Member, Pennsylvania Association of Notaries

PROOF OF SERVICE

STATE OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

I am employed in the County of Allegheny, State of Pennsylvania. I am over the age of 18 and not a party to the within action. My business address is The 26th Floor Koppers Building, Pittsburgh, Pennsylvania 15219.

On June 25, 2008, using the Northern District of California's Electronic Case Filing System, with the ECF ID registered to Joseph N. Kravec, Jr., I filed and served the document(s) described as:

**AFFIDAVIT OF JOSEPH N. KRAVEC, JR. IN SUPPORT
OF PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTIONS TO DISMISS**

The ECF System is designed to automatically generate an e-mail message to all parties in the case, which constitutes service. According to the ECF/PACER system, for this case, the parties are served as follows:

Janet Lindner Spielberg, Esquire	jlspielberg@jlspl.com
Ira Spiro, Esquire	ira@spiromoss.com
Robert Ira Spiro, Esquire	ira@spiromoss.com
J. Mark Moore, Esquire	mark@spiromoss.com
Michael D. Braun, Esquire	service@braunlawgroup.com

Attorneys for Plaintiffs

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Jonathan M. Lloyd, Esquire	jonathanlloyd@dwt.com

Attorneys for Defendant Washington Mutual, Inc.

Laura Jean Fowler, Esquire	lfowler@mhalaw.com
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Attorneys for Defendant eAppraiseIT

Margaret Anne Keane, Esquire	mkeane@dl.com
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Jeffrey D. Rotenberg, Esquire jrotenberg@tpw.com
Richard F. Hans, Esquire rhans@tpw.com

Attorneys for Defendant LSI Appraisal, LLC

On June 25, 2008, I served the document(s) described as:

**AFFIDAVIT OF JOSEPH N. KRAVEC, JR. IN SUPPORT
OF PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTIONS TO DISMISS**

by placing a true copy(ies) thereof enclosed in a sealed envelope(s) addressed as follows:

Kerry Ford Cunningham, Esquire
Patrick J. Smith, Esquire
Thacher Proffitt & Wood LLP
Two World Financial Center
New York, New York 10281

Attorneys for eAppraiseIT

Kris H. Man, Esquire
Dewey and LeBoeuf LLP
One Embarcadero Center
Suite 400
San Francisco, CA 94111-3619

Attorneys for LSI Appraisal, LLC

I served the above document(s) as follows:

BY MAIL. I am familiar with the firm's practice of collection and processing correspondence by mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pittsburgh, Pennsylvania in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in an affidavit.

I am employed in the office of an attorney who is admitted *pro hac vice* in this action at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 25, 2008, at Pittsburgh, Pennsylvania.

S/MARCIA Z. CARNEY
Marcia Z. Carney

A. U.S. Department of Housing
and Urban Development

FINAL

Settlement Statement

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FMHA	3. <input type="checkbox"/> Conv. Unins.
4. <input type="checkbox"/> VA	5. <input checked="" type="checkbox"/> Conv. Ins.	
6. File Number 6090335	7. Loan Number 0047468970	
8. Mortgage Ins. Case No.		

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked ("POC") were paid outside the closing: they are shown here for information purposes and are not included in the totals.

D. Name of Borrower: Sidney Scholl

E. Name of Seller: Savannah Builders LLC **TIN:**

F. Name of Lender: Washington Mutual Bank, F.A., 3050 Highland Parkway, 8th Floor, Downers Grove, IL 60515

G. Property Location: Lot 2, Block 3, STONEBRIAR 1
817 Northwest 194 Terrace, Edmond, OK 73003

H. Settlement Agent: Stewart Abstract & Title of Oklahoma (405) 232-8764 **TIN:** 73-1093494
Place of Settlement: 4401 W. Memorial Road, Suite #106, Oklahoma City, OK 73134

I. Settlement Date: 10/4/2008 **Proration Date:** 10/4/2008

J. Summary of Borrower's Transaction

K. Summary of Seller's Transaction

100. Gross amount due from borrower:		400. Gross amount due to seller:	
101. Contract sales price	289,000.00	401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	6,132.18	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	295,132.18	420. Gross amount due to seller:	
200. Amounts paid by or in behalf of the borrower:		500. Reduction in amount due to seller:	
201. Deposit or earnest money	5,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	231,200.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan Kirkpatrick Bank	
205.		505. Payoff of second mortgage loan	
206.		506. Deposit or earnest money	
207. Seller paid closing cost for buyer	2,312.00	507. Seller paid closing cost for buyer	
208.		508. Federal Express	
209.		509. Release	
Adjustments for items unpaid by seller:		Adjustments for items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514. 2008 HOA Dues 10/4/2008 to 1/1/2007	
215. October Rent 10/4/2008 to 10/31/2008	1,841.56	515. October Rent 10/4/2008 to 10/31/2008	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total paid by/for borrower:	240,353.56	520. Total reduction in amount due seller:	
300. Cash at settlement from/to borrower:		600. Cash at settlement to/from seller:	
301. Gross amount due from borrower (line 120)	295,132.18	601. Gross amount due to seller (line 420)	
302. Less amount paid by/for borrower (line 220)	240,353.56	602. Less total reduction in amount due seller (line 520)	
303. CASH (X)FROM (J)TO BORROWER	54,778.62	603. CASH (J)FROM (X)TO SELLER	

SUBSTITUTE FORM 1099 SELLER STATEMENT - The information contained in Blocks E, G, H and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404), 406, 407 and 408-412 (applicable part of buyer's real estate tax reportable to the IRS) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

SELLER INSTRUCTION - If this real estate was your principal residence, file form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of form 4797, Form 6252 and/or Schedule D (Form 1040).

You are required by law to provide Stewart Abstract & Title of Oklahoma (405) 232-8764 with your correct taxpayer identification number.

If you do not provide Stewart Abstract & Title of Oklahoma (405) 232-8764 with your correct taxpayer identification number, you may be subject to civil or criminal penalties.

Savannah Builders LLC

sales/broker commission

based on : = \$16,092.00

File Number: 8090335


Division of commission (line 700) as follows:

		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
2.	\$16,092.00 to ReMax Associates, Realtors		
03.	Commission paid at settlement \$16,092.00		
704.			
705.	Transaction/Closing Coordinator Fee		
706.	Transaction/Closing Coordinator Fee		
800.	Items payable in connection with loan		
801.	Loan origination fee to Washington Mutual Bank, F. (1%)	2,312.00	
802.	Loan discount to Washington Mutual Bank, F.	1,098.20	
803.	Appraisal fee to Washington Mutual Bank, F.A.	255.00	
804.	Credit report		
805.	Lender's inspection fee		
806.	Mortgage insurance application fee		
807.	Assumption fee		
808.	Underwriting Fee		
809.	Tax Service Fee		
810.	Flood Certification Fee to LERETA Corp		
811.	Document Preparation Fee	8.00	
812.	Tax Research Fee to Washington Mutual Bank, F.A.		
813.	Tax Procurement Fee to LERETA Corp	31.00	
814.	Yield Spread Premium	50.00	
815.	Loan Review Fee to Washington Mutual Bank, F.A.		
816.		360.00	
900.	Items required by lender to be paid in advance		
901.	Interest from 10/4/2006 to 11/1/2006 at \$41.0100/day for 28 days.	1,148.28	
902.	Mortgage insurance premium for		
903.	Hazard insurance premium for 1 yrs. to State Farm		
904.			
905.			
1000.	Reserves deposited with lender		
1001.	Hazard Insurance		
1002.	Mortgage Insurance		
1003.	City property taxes		
1004.	County property taxes		
1005.	Annual assessments (maint.)		
1006.			
1007.			
1008.			
1009.	Aggregate Adjustment		
1100.	Title charges		
1101.	Settlement or closing fee to Stewart Abstract & Title of Oklahoma	37.50	
1102.	Abstract or title search		
1103.	Title examination Waived		
1104.	Title insurance binder		
1105.	Document preparation		
1106.	Notary fees		
1107.	Attorney's fees to		
	Includes above items no.:		
1108.	Title Insurance to Stewart Abstract & Title of Oklahoma		
	Includes above items no.: Discounted	380.00	
1109.	Lender's coverage \$231,200.00 \$50.00		
1110.	Owner's coverage \$289,000.00 \$710.00		
1111.	Interim Title Report to Stewart Abstract & Title of Oklahoma		
1112.	Courier Fee to Stewart Abstract & Title of Oklahoma	50.00	
1113.	File Quit Claim Deed to Oklahoma County Clerk	35.00	
1114.			
1115.			
1116.			
1200.	Government recording and transfer charges		
1201.	Recording fees: Deed \$21.00 Mortgage \$55.00		
1202.	City/county tax/stamps:	76.00	
1203.	State tax/stamps: Deed \$433.50		
1204.	Mortgage Tax Mortgage \$231.20		
1205.	Mortgage Certification to County Treasurer	231.20	
1206.	Assignment	5.00	
1300.	Additional settlement charges		
1301.	Survey 0608226 to Miller Survey		
1302.	Pest Inspection Pretreat/Soil Cert	55.00	
1303.	Home Inspection Fee		
1304.	Repairs		
1305.	Hme Warr. to be done @ end of Lease		
1306.	HOA Verification Fee to Neighborhood Services		
1307.			
1400.	Total settlement charges (entered on lines 103, section J and 502, section K)	6,132.18	

CERTIFICATION: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipt and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.

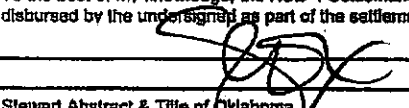


Sidney Scholl



Savannah Builders LLC

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.



Stewart Abstract & Title of Oklahoma



Date 10/6/06

SELLER'S AND/OR PURCHASER'S STATEMENT Seller's and Purchaser's signature hereon acknowledges his/her approval of tax prorrations and signifies their understanding that prorrations were based on taxes for the preceding year, or estimates for the current year, and in the event of any change for the current year, all necessary adjustments must be made between Seller and Purchaser; likewise any default in delinquent taxes will be reimbursed to Title Company by the Seller.

Title Company, in its capacity as Escrow Agent, is and has been authorized to deposit all funds it receives in this transaction in any financial institution, whether affiliated or not. Such financial institution may provide Title Company computer accounting and audit services directly or through a separate entity which, if affiliated with Title Company, may charge the financial institution reasonable and proper compensation therefor and retain any profits therefrom. Any escrow fees paid by any party involved in this transaction shall only be for checkwriting and input to the computers, but not for aforesaid accounting and audit services. Title Company shall not be liable for any interest or other charges on the earnest money and shall be under no duty to invest or reinvest funds held by it at any time. Sellers and Purchasers hereby acknowledge and consent to the deposit of the escrow money in financial institutions with which Title Company has or may have other banking relationships and further consent to the retention by Title Company and/or its affiliates of any and all benefits (including advantageous interest rates on loans) Title Company and/or its affiliates may receive from such financial institutions by reason of their maintenance of said escrow accounts.

The parties have read the above sentences, recognize that the recitations herein are material, agree to same, and recognize Title Company is relying on the same.

Purchasers/Borrowers

Sellers

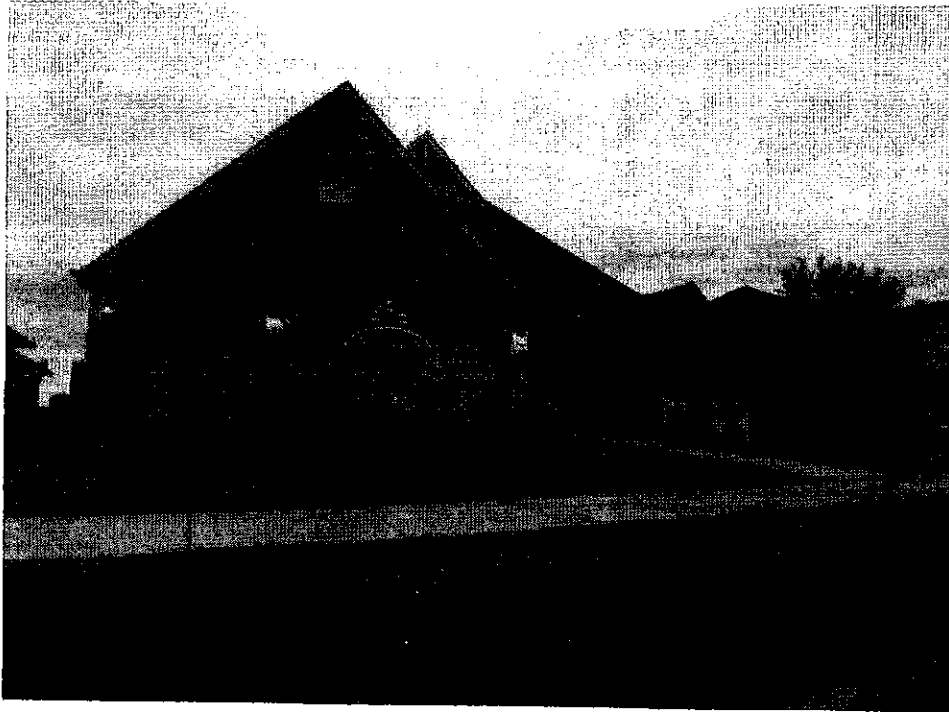


Sidney Scholl



Savannah Builders LLC

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18: U.S. Code Section 1001 and Section 1010.



APPRAISAL OF REAL PROPERTY

LOCATED AT:

817 NW 194th Ter
Lot 2 Block 3 Stonebriar Sec 1
Edmond, OK 73003

FOR:

Washington Mutual/eAppraiseIt
75 N Fairway Dr
Vernon Hills, IL 60061

AS OF:

09/17/06

BY:

Elizabeth J Angelo

Summary Appraisal Report

Exterior-Only Inspection Residential Appraisal Report

03-2783-004746897-0

File # 2968756

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address 817 NW 194th Ter City Edmond State OK Zip Code 73003
 Borrower Sidney Scholl Owner of Public Record OKGeoBuilders LLC County Oklahoma
 Legal Description Lot 2 Block 3 Stonebriar Sec 1
 Assessor's Parcel # 20-637-1460 Tax Year 2006 R.E. Taxes \$ 0
 Neighborhood Name Stonebriar Map Reference 36420 Census Tract 40109-1082.12

SUBJECT
 Occupant ☐ Owner ☐ Tenant ☒ Vacant Special Assessments \$ None ☐ PUD HOA \$ N/A ☐ per year ☐ per month
 Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)
 Assignment Type ☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)
 Lender/Client Washington Mutual/eAppraiseit Address 75 N Fairway Dr, Vernon Hills, IL 60061
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No
 Report data source(s) used, offering price(s), and date(s). Oklahoma City MLS Listing Service

CONTRACT
 I ☐ did ☒ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. No contract was provided. Sales price was provided by lender.
 Appraiser is unable to verify property owner without a contract.
 Contract Price \$ 289,000 Date of Contract Unknown Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) Per Lender
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No
 If Yes, report the total dollar amount and describe the items to be paid. Unknown To appraisers knowledge there are no financing concessions.

NEIGHBORHOOD
 Note: Race and the racial composition of the neighborhood are not appraisal factors.
 Location ☐ Urban ☒ Suburban ☐ Rural Property Values ☐ Increasing ☒ Stable ☐ Declining PRICE AGE One-Unit 90 %
 Built-Up ☒ Over 75% ☐ 25-75% ☐ Under 25% Demand/Supply ☐ Shortage ☒ In Balance ☐ Over Supply \$ (000) (yrs) 2-4 Unit %
 Growth ☐ Rapid ☒ Stable ☐ Slow Marketing Time ☐ Under 3 mths ☒ 3-6 mths ☐ Over 6 mths 122 Low new Multi-Family %
 Neighborhood Boundaries Bounded Covell Rd on the north Santa Fe Ave on the east Danforth Rd on the 460 High 10 Commercial %
 south and Western Ave on the west. 200 Pred. 3 Other 10 %
 Neighborhood Description There are no apparent adverse factors which should affect the subject's marketability. Appeal to the market is average. The
 Improvements conform well with the surrounding area. The subject has access to necessary supporting facilities including schools, shopping,
 recreation and employment.
 Market Conditions (including support for the above conclusions) Property values in the subject area are considered to be stable with demand and supply
 being in balance. Primary financing in this market is Conventional, FHA and VA with little seller participation. 1 to 3 point typical.

SITE
 Dimensions 70 x 120 Area 8,400 Sq.Ft. +/- Shape Rectangular View Avg/Interior
 Specific Zoning Classification A Single Family Zoning Description Single Family Residence
 Zoning Compliance ☒ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe
 Utilities Public Other (describe) Public Other (describe) Off-site Improvements - Type Public Private
 Electricity ☒ ☐ Water ☒ ☐ Street Concrete ☒ ☐
 Gas ☒ ☐ Sanitary Sewer ☒ ☐ Alley ☐ ☐
 FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 40109C0066G FEMA Map Date 7/2/2002
 Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe

IMPROVEMENTS
 Source(s) Used for Physical Characteristics of Property ☐ Appraisal Files ☐ MLS ☒ Assessment and Tax Records ☐ Prior Inspection ☐ Property Owner
☒ Other (describe) MDC Appraisal Source, Assessor Data Source for Gross Living Area MDC Appraisal Source
 Units ☒ One ☐ One with Accessory Unit ☒ Concrete Slab ☐ Crawl Space ☒ FWA ☐ HWBB ☒ Fireplace(s) # 1 ☐ None
 # of Stories 1 ☐ Full Basement ☐ Finished ☐ Radiant ☐ Woodstove(s) # ☒ Driveway # of Cars 3
 Type ☒ Det. ☐ Att. ☐ S-Det/End Unit ☐ Partial Basement ☐ Finished ☐ Other ☒ Patio/Deck Driveway Surface
☒ Existing ☐ Proposed ☐ Under Const. Exterior Walls Brick Fuel gas ☒ Porch Cov ☒ Garage # of Cars 3
 Design (Style) Traditional Roof Surface Composition ☒ Central Air Conditioning ☐ Pool ☐ Carport # of Cars
 Year Built 2006 Gutters & Downspouts Galvanized ☐ Individual ☐ Fence ☒ Attached ☐ Detached
 Effective Age (Yrs) N/A Window Type Thermal ☐ Other ☐ Built-In
 Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☒ Microwave ☐ Washer/Dryer ☐ Other (describe)
 Finished area above grade contains: 8 Rooms 4 Bedrooms 3 Bath(s) 2,546 Square Feet of Gross Living Area Above Grade
 Additional features (special energy efficient items, etc.) Three bedrooms and a study or four bedrooms.
 Describe the condition of the property and data source(s) (including apparent needed repairs, deterioration, renovations, remodeling, etc.) Overall condition is good and no
 repairs are required. Good quality construction and functional utility. Subject is in an area of similar new construction homes.
 Are there any apparent physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No
 If Yes, describe.
 Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe.

Exterior-Only Inspection Residential Appraisal Report

03-2783-004746897-0
File # 2968756

There are 24 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 179,900 to \$ 454,000	
There are 51 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 122,500 to \$ 298,000	
FEATURE	SUBJECT
Address	817 NW 194th Ter Edmond, OK 73003
Proximity to Subject	0.05 miles E
Sale Price	\$ 289,000
Sale Price/Gross Liv. Area	\$ 113.51 sq.ft.
Data Source(s)	Assessor
Verification Source(s)	MLS #243754
VALUE ADJUSTMENTS	DESCRIPTION
Sales or Financing	Con/Fix
Concessions	None
Date of Sale/Time	06/06/2006
Location	Stonebriar
Leasehold/Fee Simple	Fee Simple
Site	8,400 Sq.Ft. +/-
View	Avg/Interior
Design (Style)	Traditional
Quality of Construction	1.5 Brk Comp/A
Actual Age	New
Condition	Very Good
Above Grade	Total Bdrms. Baths
Room Count	8 4 3
Gross Living Area	2,546 sq.ft.
Basement & Finished	N/A
Rooms Below Grade	N/A
Functional Utility	Good
Heating/Cooling	Central/Central
Energy Efficient Items	Therm Winds
Garage/Carport	3 Car Attached
Porch/Patio/Deck	Cov Por
Net Adjustment (Total)	\$ 5,630
Adjusted Sale Price of Comparables	\$ 288,630
I <input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
Data Source(s) Oklahoma County Assessor	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.	
Data Source(s) Oklahoma County Assessor	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).	
ITEM	SUBJECT
Date of Prior Sale/Transfer	11/30/2005
Price of Prior Sale/Transfer	36,000
Data Source(s)	OK County Assessor
Effective Date of Data Source(s)	Approx 30 days
Analysis of prior sale or transfer history of the subject property and comparable sales All previous sales were land sales. Subject and comparables are all new construction.	
Summary of Sales Comparison Approach All sales were within net and gross adjustment guidelines. The comparable sales selected were the most recent and pertinent sales relative to the subject property. One and two story homes appear to market equally. All sales were located in the subjects' market area, but outside normal distance perimeters due to scarcity of similar sales in subjects' area. Sales are located in areas considered to possess very similar homes targeted to the same potential purchasers.	
Indicated Value by Sales Comparison Approach \$ 289,000	
Indicated Value by: Sales Comparison Approach \$ 289,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A	
This is an exterior only. Insufficient data for the cost approach and income approach.	
This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: No requirements. Appraisal is made for the intended user listed above.	
Based on a visual inspection of the exterior areas of the subject property from at least the street, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 289,000 as of 09/17/06, which is the date of inspection and the effective date of this appraisal.	

Exterior-Only Inspection Residential Appraisal Report

03-2783-004746897-0
File # 2968756

***The intended user for this appraisal report is the Lender/Client, noted in this appraisal report. The intended use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value. No additional Intended Uses or Users are identified by the appraiser.

Extraordinary Assumption: Due to the confidential nature of the comparable sales data, this report contains the extraordinary assumption that the county records are correct and accurate as reported and shown. The impact on value will be related to any significant changes determined later if it is found that the sale data is incorrect as relates to price, concessions, etc.

Hypothetical Conditions assume conditions contrary to known facts about legal, physical or economic characteristics of the subject, but is considered for the purpose of the analysis.

***The Oklahoma wildfires had no effect on the subject. Subject is in marketable condition and no repairs are needed and no other detrimental conditions were found.

ADDITIONAL COMMENTS

Scope of Work for this assignment was typical for that of a residential assignment in which a exterior appraisal was performed. An order was received from the client. The assignment was to find an opinion of market valuation. After analyzing data via the internet on Assessor, MLS, PV Plus & MDC, an appraisal data base, a sufficient amount of data was found to complete this assignment. All sales were arms length transactions. I did a exterior inspection of the subject property, from the street, taking exterior photos. After gathering data and exterior inspecting the subject property, I analyzed the data further and started preparing the appraisal summary report. The Uniform Standards of Professional Appraisal Practice of July 2006 was utilized throughout this process.

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Estimated land value may or may not be based on actual land sales depending on age of the area and availability of information.

COST APPROACH

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$	36,000
Source of cost data	DWELLING 2,546 Sq.Ft. @ \$	= \$	
Quality rating from cost service Effective date of cost data	Sq.Ft. @ \$	= \$	
Comments on Cost Approach (gross living area calculations, depreciation, etc.)		= \$	
Insufficient information available for a cost approach with an exterior only.	Garage/Carport Sq.Ft. @ \$	= \$	
	Total Estimate of Cost-New	= \$	
	Less Physical Functional External		
	Depreciation	= \$()
	Depreciated Cost of Improvements	= \$	
	"As-is" Value of Site Improvements	= \$	
Estimated Remaining Economic Life (HUD and VA only) 60 Years	INDICATED VALUE BY COST APPROACH	= \$	

INCOME

Estimated Monthly Market Rent \$ N/A	X Gross Rent Multiplier N/A	= \$	N/A	Indicated Value by Income Approach
Summary of Income Approach (including support for market rent and GRM)				

PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☐ No Unit type(s) ☐ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project

Total number of phases	Total number of units	Total number of units sold
Total number of units rented	Total number of units for sale	Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source(s)

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Exterior-Only Inspection Residential Appraisal Report03-2783-004746897-0
File # 2968756

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit, including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a visual inspection of the exterior areas of the subject property from at least the street, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

The appraiser must be able to obtain adequate information about the physical characteristics (including, but not limited to, condition, room count, gross living area, etc.) of the subject property from the exterior-only inspection and reliable public and/or private sources to perform this appraisal. The appraiser should use the same type of data sources that he or she uses for comparable sales such as, but not limited to, multiple listing services, tax and assessment records, prior inspections, appraisal files, information provided by the property owner, etc.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
5. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Exterior-Only Inspection Residential Appraisal Report03-2783-004746897-0
File # 2968756**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a visual inspection of the exterior areas of the subject property from at least the street. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

Exterior-Only Inspection Residential Appraisal Report03-2783-004748897-0
File # 2968756

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

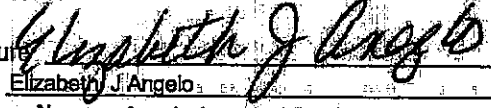
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER

Signature 
Name Elizabeth J. Angelo
Company Name Angelo Appraisal Service, Inc.
Company Address 1217 Salem Ave, Edmond, OK 73003

Telephone Number (405) 340-1556
Email Address angeloappraisalservice@cox.net
Date of Signature and Report 09/20/2008
Effective Date of Appraisal 09/17/06
State Certification # 11243CRA
or State License # _____
or Other (describe) _____ State # _____
State OK
Expiration Date of Certification or License 3/31/2009
ADDRESS OF PROPERTY APPRAISED
817 NW 194th Ter
Edmond, OK 73003

APPRAISED VALUE OF SUBJECT PROPERTY \$ 289,000

LENDER/CLIENT

Name _____
Company Name Washington Mutual/eAppraiseIT
Company Address 75 N Fairway Dr, Vernon Hills, IL 60061
Email Address lsistatus@lendersservice.com

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
Name _____
Company Name _____
Company Address _____
Telephone Number _____
Email Address _____
Date of Signature _____
State Certification # _____
or State License # _____
State _____
Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection _____

Subject Photos

Borrower/Client	Sidney Scholl			
Property Address	817 NW 194th Ter			
City	Edmond	County	Oklahoma	State OK Zip Code 73003
Lender	Washington Mutual/eAppraiseIT			

**Subject Front**

817 NW 194th Ter
Sales Price 289,000
Gross Living Area 2,546
Total Rooms 8
Total Bedrooms 4
Total Bathrooms 3
Location Stonebriar
View Avg/Interior
Site 8,400 Sq.Ft. +/-
Quality 1.5 Brk Comp/A
Age New

Subject Rear**Subject Street**

Comparable Photos ##

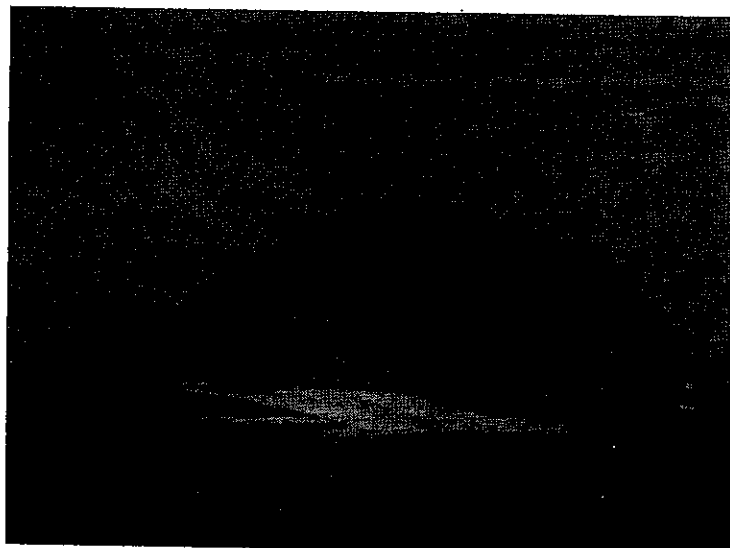
Borrower/Client	Sidney Scholl			
Property Address	817 NW 194th Ter			
City	Edmond	County	Oklahoma	State OK Zip Code 73003
Lender	Washington Mutual/eAppraiseIT			

**Comparable 1**

821 NW 1994th
Prox. to Subject 0.05 miles E
Sales Price 283,000
Gross Living Area 2,480
Total Rooms 8
Total Bedrooms 3
Total Bathrooms 2
Location Stonebriar
View Avg/Interior
Site 11,500 SF +/-
Quality 1 Brk Comp/A
Age New

**Comparable 2**

19417 Crest Ridge Drive
Prox. to Subject 0.06 miles E
Sales Price 282,321
Gross Living Area 2,419
Total Rooms 7
Total Bedrooms 3
Total Bathrooms 1.2
Location Stonebriar
View Avg/Interior
Site 12000 SF +/-
Quality 1 Brk Comp/A
Age New

**Comparable 3**

1609 Redland
Prox. to Subject 2.43 miles NE
Sales Price 296,000
Gross Living Area 2,830
Total Rooms 9
Total Bedrooms 4
Total Bathrooms 3.1
Location CheyenneCross
View Avg/Interior
Site 16000 SF +/-
Quality 1.5 Brk Comp/A
Age New

State of Oklahoma



The Oklahoma Real Estate Appraiser Board

Oklahoma Real Estate Appraiser Board

This is to certify that:

Elizabeth J. Angelo

has complied with the provisions of the Oklahoma Real Estate Appraisers Act to maintain business as a Certified Residential Real Estate Appraiser in the State of Oklahoma.

In Witness Whereof, I have hereunto set my hand and caused the seal of my office to be affixed at the City of Oklahoma City, State of Oklahoma, this 7th day of March A.D. 2008.

Karen A. Angelo
Executive, Oklahoma Real Estate Appraiser Board

Member, Oklahoma Real Estate Appraiser Board

Date: March 11, 2008

11243CRA

ELIZABETH J. ANGELO

1217 Salem Ave
Edmond, OK 73003
(405) 340-1555 Fax (405) 340-7388
AngeloAppraisalServices@aol.com

EDUCATION**BBA Finance**

University of Central Oklahoma, OK 1992
AAS Banking, Real Estate & Insurance
Hudson Valley Community College, NY 1972
Charles Barnes School of RE Appraisal, OK 1992

1992-1992

Real Estate Law
Real Estate Principles
Real Estate Practices

1996-1999

FHA Appraisals
Technology & Modern Appraiser
New Construction
Home Inspection-Common Defects
Introduction to Income Property

2000-2002

Residential Analysis for Small Income Property
Financial Analysis of Income Property
Dissection of a Residential Appraisal Report
Computing GLA using Anal Standards
Is a Comparable A Comparable?

2003-2005

Documenting & Supporting Appraisal Reports
Mobile & Manufacturing Homes
Market Abstraction
Reviewing Residential Appraisals
Narrative Report Writing
Building Material Characteristics
New Fannie Mae Forms Review
USPAP Update

EXPERIENCE

Full Time Residential Appraiser- October 1994- Present
Seven years experience in a RE Construction & Mgmt Office

CREDENTIALS

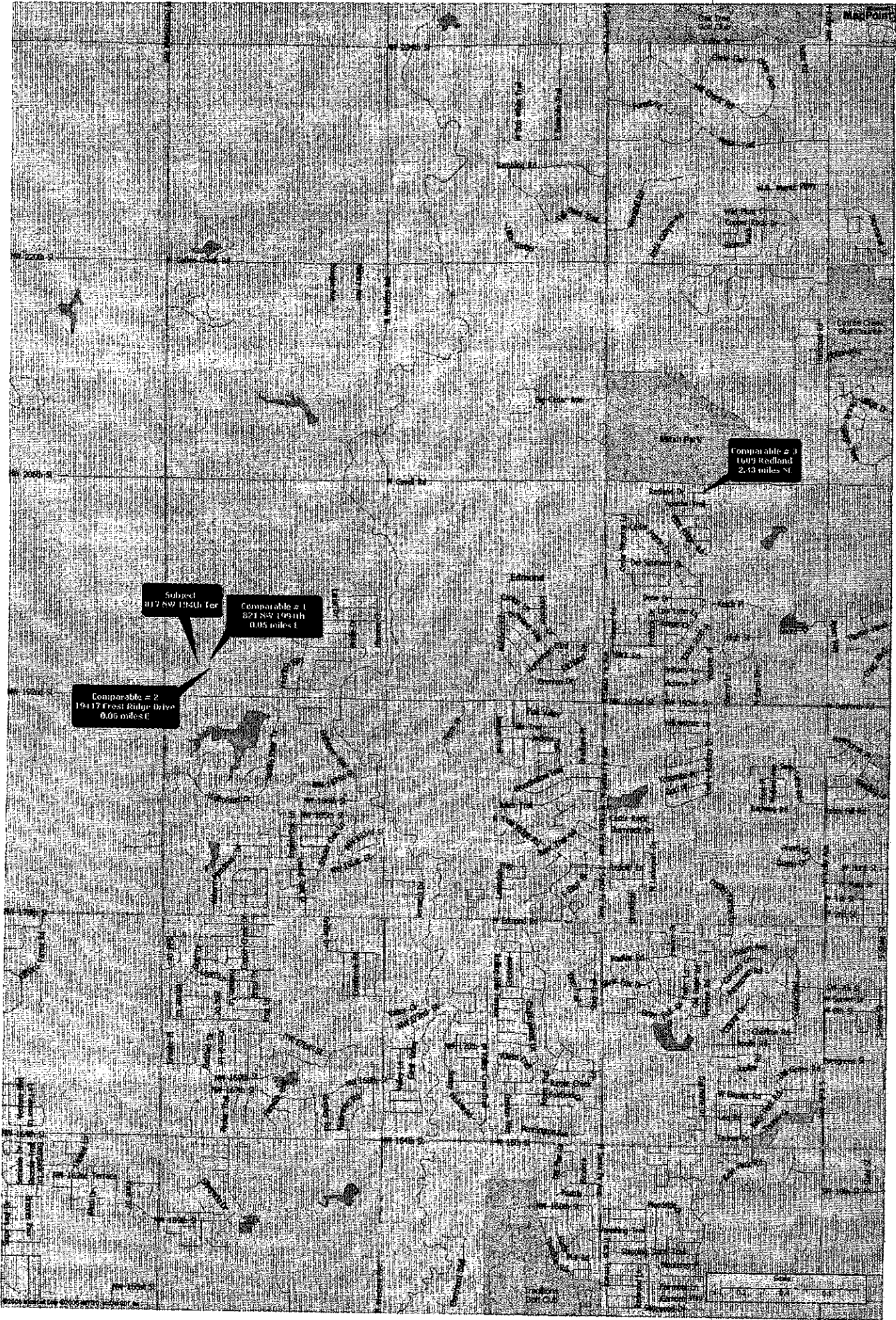
OK Certified Residential Appraisal License #11243CRA
FHA Approved Chams #4237

PROFESSIONAL MEMBERSHIPS

Oklahoma Metropolitan Board of Realtors
National Association of Independent Fee Appraisers

Location Map

Borrower/Client	Sidney Scholl		
Property Address	817 NW 194th Ter		
City	Edmond	County	Oklahoma
Lender	Washington Mutual/eAppraiseIT	State	OK
		Zip Code	73003



FROM : ALFONSO TONI SPEARS ""

FAX NO. :

Feb. 05 2008 08:04PM P2

ALLIANCE TITLE COMPANY901 Campisi Way, Suite 100, Campbell, CA 95008
Phone: (408) 559-3424 Fax: (408) 377-0284**BUYERS/BORROWERS CLOSING STATEMENT**
EstimatedBuyer/Borrower: **Felton A. Spears**
Toni SpearsEscrow No: **11517558-001 JLT**
Close Date:
Proration Date:
Date Prepared: **03/03/2007**Property: **10161 Roehampton Avenue**
San Jose, CA 95127

Description	Debit	Credit
NEW AND EXISTING ENCUMBRANCES:		
Refinance from Washington Mutual Bank		\$178,000.00
NEW LOAN CHARGES:		
Appraisal Fee to Washington Mutual Bank	361.00	
Tax Service to Washington Mutual Bank	81.00	
Flood Determination to LandAmerica Tax & Flood	8.00	
Funding & Review Fee to Washington Mutual Bank	480.00	
Wire Transfer Fee to Washington Mutual Bank	35.00	
Payment Processing to Washington Mutual Bank	200.00	
Credit-Customer Retent to Washington Mutual Bank	(980.00)	
Prepaid Interest to Washington Mutual Bank	621.80	
@ \$31.09 per day From 03/12/07 To 04/01/07		
Hazard Insurance to Washington Mutual Bank	222.00	
3 mos. @ \$74.00/month		
County Property Taxes to Washington Mutual Bank	499.47	
3 mos. @ \$166.49/month		
RECORDING FEES:		
Recording Fees to Alliance Title Company	73.00	
Record Release to Alliance Title Company	18.00	
ADDITIONAL CHARGES:		
Homeowners Insurance Premium to Please Advise (If Needed)	600.00	
PAYOFFS:		
Payoff to World Savings	\$155,423.11	
\$154,165.58 Principal Balance		
\$561.75 Interest From 03/01/2007 to 03/16/2007		
\$561.78 Interest 2/15/07-3/01/07		
\$54.00 Reconveyance Fee		
\$80.00 Statement Fee		

ESCROW AND TITLE CHARGES:		
Lenders Policy \$178,000.00 to Alliance Title Company	584.00	
Delivery/Courier Deliveries to Alliance Title Company	65.00	
Escrow Fee to Alliance Title Company	250.00	
Notary Fee to Alliance Title Company	75.00	
Sub Totals	158,616.38	178,000.00
Refund Due Buyer/Borrower	19,383.62	
Totals	\$178,000.00	\$178,000.00

Felton A. Spears

Toni Spears

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUSAN CHAMBERLAN, BRIAN CHAMPINE,
and HENRY FOK, on behalf of
themselves and all others similarly
situated, and on behalf of the
general public,

Plaintiffs,

v.

FORD MOTOR COMPANY, and DOES 1
through 100, inclusive,

Defendants.

No. C 03-2628 CW

ORDER GRANTING
IN PART
DEFENDANT'S
MOTION TO
DISMISS AND
DENYING IT IN
PART

Plaintiffs Susan Chamberlan, Brian Champine, and Henry Fok (Plaintiffs) are suing Defendant Ford Motor Company (Defendant) for violations of the California Consumers Legal Remedies Act (CLRA), Cal. Civ. Code § 1750 et seq., and the Unfair Competition Law (UCL), Cal. Bus. & Prof. Code §§ 17200 et seq. Defendant moves pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss Plaintiffs' complaint for failure to state a claim and files a request for judicial notice. Plaintiffs oppose the motion and the request for judicial notice. The matter was heard on August 1, 2003. Having

1 considered oral argument on the motion and all of the papers
2 filed by the parties, the Court GRANTS Defendant's motion to
3 dismiss in part and DENIES it in part and GRANTS Defendant's
4 request for judicial notice. The Court also GRANTS Plaintiffs
5 leave to amend their complaint.

6 BACKGROUND

7 Plaintiffs bring this action on behalf of themselves and
8 all similarly situated persons residing in California who
9 purchased certain automobiles (Subject Automobiles)¹ manufactured
10 by Defendant. In relevant part, the complaint alleges that
11 beginning in 1996, Defendant manufactured, sold, and distributed
12 Subject Automobiles containing defective intake manifolds.
13 Compl. at ¶ 2. Plaintiffs allege that no later than January 1,
14 1997, and possibly earlier, Defendant became aware that a large
15 number of intake manifolds in the Subject Automobiles were
16 cracking prematurely, exposing drivers and their passengers to
17 serious risk of injury. Id. at ¶ 4. Plaintiffs allege that
18 Defendant's testing and records showed that the intake manifolds
19 failed at a "much higher rate than was to be expected from a
20 properly functioning manifold, and was occurring much more
21 quickly than the expected life of the part." Id. at ¶ 5.

22 Starting in January, 1998, Defendant began to offer several
23 extended warranty protection, or "recall," programs for free
24 replacement or repair of the defective intake manifolds for some

25 ¹ Subject Automobiles include Mercury Grand Marquis (1996-
26 2001), Ford Mustang (1996-2001), Ford Explorer (2002), Ford
27 Crown Victoria (1996-2001), Lincoln Town Car (1996-2001),
Mercury Cougar (1996-1997), and Ford Thunderbird (1996-1997).

1 of the Subject Automobiles. Id. at ¶ 6. Plaintiffs allege,
2 however, that Defendant extended this offer almost exclusively
3 to fleet purchasers of Subject Automobiles such as taxi cab
4 companies, limousine companies, and police forces. Id.
5 Plaintiffs allege that by failing to send the recall letter or
6 offer the recall program to the vast majority of consumer
7 purchasers of Subject Automobiles, Defendant "concealed from
8 and/or failed to disclose to Plaintiffs and the Class the
9 defective nature of the intake manifolds contained in the
10 Subject Automobiles." Id. at ¶ 7. As a result of these
11 defective intake manifolds, the Subject Automobiles purchased by
12 Plaintiffs and the Class "did not perform in accordance with the
13 reasonable expectations of Plaintiffs and the Class—namely, that
14 the automobiles were suitable for normal use as a passenger
15 vehicle." Id. at ¶ 8.

16 The complaint alleges that Plaintiff Brian Champine bought
17 a 1996 Ford Thunderbird on September 13, 2000 and the intake
18 manifold cracked on March 28, 2002 at about 88,000 miles. Id.
19 at ¶ 12. Plaintiff Susan Chamberlan bought a used 1997 Mercury
20 Grand Marquis. In June, 2002, the intake manifold in her car
21 cracked at about 60,000 miles. Id. at ¶ 13. Plaintiff Henry
22 Fok bought a used 1998 Mustang GT convertible, and in March,
23 2003, the car's intake manifold cracked at 70,000 miles. Id. at
24 ¶ 14. Plaintiffs allege that Defendant, "through its own
25 efforts and through its network of authorized dealerships acting
26 as its agents . . . warranted, advertised, distributed, and sold
27 its automobiles throughout the state of California." Id. at ¶

1 16.

2 Plaintiffs' CLRA claim alleges that Defendant engaged in
3 "unfair competition or unfair or deceptive practices in
4 violation of Civil Code sections 1770(a)(5) and (7) when they
5 failed to disclose that the Subject Automobiles contain
6 defective intake manifolds." Id. at ¶ 29.

7 Plaintiffs' UCL claim alleges that Defendant engaged in
8 "unfair competition or unlawful, unfair or fraudulent business
9 practices in violation of the Unfair Business Practices Act when
10 they omitted to disclose that the Subject Automobiles have
11 defective intake manifolds." Id. at ¶ 34. Plaintiffs request
12 damages, restitution, and attorneys' fees.

13 LEGAL STANDARD

14 A motion to dismiss for failure to state a claim will be
15 denied unless it appears that the plaintiff can prove no set of
16 facts which would entitle it to relief. Conley v. Gibson, 355
17 U.S. 41, 45-46 (1957); Fidelity Financial Corp. v. Federal Home
18 Loan Bank, 792 F.2d 1432, 1435 (9th Cir. 1986), cert. denied,
19 497 U.S. 1064 (1987). Dismissal of a complaint can be based on
20 either the lack of a cognizable legal theory or the lack of
21 sufficient facts alleged under a cognizable legal theory.
22 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir.
23 1990).

24 All material allegations in the complaint will be taken as
25 true and construed in the light most favorable to the plaintiff.
26 NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).
27 However, "conclusory allegations without more are insufficient
28

1 to defeat a motion to dismiss." McGlinchy v. Shell Chemical
2 Co., 845 F.2d 802, 810 (9th Cir. 1988); Smilecare Dental Group
3 v. Delta Dental Plan, 88 F.3d 780, 785 n.6 (9th Cir.), cert.
4 denied, 519 U.S. 1028 (1996).

7 DISCUSSION

8 I. The CLRA and the UCL

9 The CLRA makes illegal "unfair methods of competition and
10 unfair or deceptive acts or practices undertaken by any person
11 in a transaction intended to result or which results in the sale
12 or lease of goods or services to any consumer." Cal. Civ. Code
13 § 1770(a). Among the proscribed activities are

14 (5) Representing that goods or services have
15 sponsorship, approval, characteristics, ingredients,
16 uses, benefits, or quantities which they do not have or
17 that a person has a sponsorship, approval, status,
affiliation, or connection which he or she does not
have.

18 (7) Representing that goods or services are of a
19 particular standard, quality, or grade, or that goods
are of a particular style or model, if they are of
another.

20 Cal. Civ. Code § 1770 (a)(5), (7). The CLRA "shall be liberally
21 construed and applied to promote its underlying purposes, which
22 are to protect consumers against unfair and deceptive business
23 practices and to provide efficient and economical procedures to
24 secure such protection." Cal. Civ. Code § 1760.

25 The UCL prohibits "unfair competition," which includes "any
26 unlawful, unfair or fraudulent business act or practice and
27 unfair, deceptive, untrue or misleading advertising and any act
28

1 prohibited by Chapter 1² (commencing with Section 17500) of Part
2 3 of Division 7 of the Business and Professions Code." Cal.
3 Bus. & Prof. Code § 17200.

4 The UCL provides for monetary relief in the form of
5 restitution: "Any person who engages, has engaged, or proposes
6 to engage in unfair competition may be enjoined in any court of
7 competent jurisdiction. The court may make such orders or
8 judgments, including the appointment of a receiver, as may be
9 necessary to prevent the use or employment by any person of any
10 practice which constitutes unfair competition, as defined in
11 this chapter, or as may be necessary to restore to any person in
12 interest any money or property, real or personal, which may have
13 been acquired by means of such unfair competition." Cal. Bus. &
14 Prof. Code § 17203.

15 II. Defendant's Request for Judicial Notice

16 Defendant requests that the Court take judicial notice of
17 Assembly Bill No. 292, which documents some of the legislative
18 history of the CLRA, and of the warranties for Plaintiffs'
19 vehicles.
20

21 Although generally a court may not consider material beyond
22 the pleadings in ruling on a Rule 12(b)(6) motion, "documents
23 whose contents are alleged in a complaint and whose authenticity
24 no party questions, but which are not physically attached to the
25

26 ² Chapter 1 prohibits false advertising for a variety of
27 businesses.
28

pleading, may be considered." Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). A court may also consider documents which are not expressly incorporated into the complaint, but "upon which the plaintiff's complaint necessarily relies." Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998). Federal Rule of Evidence 201(b) permits courts to take judicial notice of adjudicative facts when they are capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned.

Defendant has submitted Assembly Bill No. 292 as it was introduced to the California Legislature on January 21, 1970 and as amended on May 22, 1970. The Assembly Bill is a public record whose accuracy cannot be reasonably questioned. Defendant has also submitted copies of the warranties for Plaintiffs' vehicles. Because Defendant's motion must be denied in relevant part even if the Court considers the warranties, the Court will judicially notice them for purposes of this motion.

III. Defendant's Motion to Dismiss

A. Warranty

Defendant contends that Plaintiffs fail to state a claim under the CLRA or the UCL because Plaintiffs cannot use these statutes retroactively to convert their vehicles' warranties into lifetime guarantees. Plaintiffs respond that their claims

1 are not warranty claims and that the CLRA and the UCL provide
2 relief to consumers, regardless of the warranty involved, if the
3 defendant engages in unfair, unlawful or fraudulent business
4 activities.

5
6 Defendant relies on several cases to argue that because the
7 intake manifolds failed after the warranty had expired,
8 Plaintiffs cannot bring claims under the CLRA or the UCL. See
9 e.g., Seely v. White Motor Co., 63 Cal. 2d. 9, 16 (1965)
10 (manufacturer's failure to comply with its obligation under
11 warranty entitled purchaser to recover damages resulting from
12 such breach of warranty); Standard Platforms. Ltd. v. Document
13 Imaging Sys. Corp., 1995 WL 691868 at *1 (N.D. Cal.) (granting
14 Rule 12(b)(6) motion to dismiss fraud claim that defendants knew
15 but failed to disclose specific defects in the products because
16 plaintiff impermissibly attempted to "tortify" contract law);
17 Greentree Software, Inc. v. Delrina Tech., Inc., 1996 WL 183041
18 at *3 (N.D. Cal.) (granting Rule 12(b)(6) motion to dismiss
19 claim for negligent misrepresentation of product quality where
20 claim, sounding in tort, was based on false statement made
21 during the performance of a commercial sales contract); Abraham
22 v. Volkswagen of Am., 795 F.2d 238, 249-50 (2d. Cir. 1986)
23 (warranty does not cover defects manifested after warranty's
24 expiration).
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1 None of the cases relied on by Defendant holds that a
2 defect manifested after the expiration of a warranty precludes a
3 plaintiff from bringing claims under the CLRA or the UCL. The
4 effect of warranty expiration is not included in the plain
5 language of the relevant sections of the CLRA and the UCL. To
6 state a claim under these statutes, a plaintiff must only allege
7 that the defendant engaged in unfair business practices. For
8 these reasons, Plaintiffs' complaint cannot be dismissed on this
9 ground.
10

11 B. Duty of Disclosure

12 Defendant argues that Plaintiffs' complaint must be
13 dismissed because Plaintiffs have not alleged and cannot
14 establish that Defendant had a duty to disclose information
15 about the allegedly defective intake manifolds.
16

17
18 The plain language of the relevant sections of the CLRA and
19 the UCL does not require a plaintiff to allege that the
20 defendant has a duty of disclosure. Although Defendant argues
21 that a manufacturer or a seller has no duty to make disclosures
22 to the buyer, it has cited no case law to show that such a duty
23 must be alleged in order to state a claim under the CLRA or the
24 UCL.
25

26 Defendant also contends that Plaintiffs' complaint is
27
28

1 insufficient as a matter of law under Rule 9(b). Defendant
2 relies on Vess v. Ciba-Geigy Corp., which held that, although
3 fraud is not a necessary element of a CLRA claim, if a plaintiff
4 chooses to allege in the complaint that a defendant has engaged
5 in fraudulent conduct, the pleading of that claim must satisfy
6 the particularity requirement of Rule 9(b) of the Federal Rules
7 of Civil Procedure. 317 F.3d 1097, 1103-04 (9th Cir. 2003).
8 Defendant claims that Plaintiffs have plead fraud but have not
9 specified when failure of the intake manifolds is so premature
10 and so frequent that Defendant has an obligation to disclose it
11 or what Plaintiffs' "expectations" were regarding the durability
12 of the manifolds.
13
14

15 In the complaint, Plaintiffs allege that no later than
16 January, 1997, Defendant became aware that the defective intake
17 manifolds were failing at a "much higher rate" than the
18 "expected life of the part," and that beginning in January,
19 1998, Defendant concealed the defects when it sold the
20 automobiles while advertising that they were of sufficient
21 quality for normal use and when it offered an extended warranty
22 program to fleet purchasers of Subject Automobiles but not to
23 the vast majority of consumers. Compl. at ¶¶ 4-7. Plaintiffs
24 also allege that because of the defective intake manifolds,
25 their Subject Automobiles did not perform in accordance with
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1 their reasonable expectation that the cars would be "suitable
2 for normal use as a passenger vehicle." Id. at ¶ 8. Thus,
3 Plaintiffs have alleged when Defendant became aware of the
4 defect, what the defect was, when it concealed the defect, and
5 what the Plaintiffs' expectations were regarding their vehicles.
6 Therefore, to the extent that Plaintiffs' claims sound in fraud,
7 they have alleged facts with sufficient particularity to satisfy
8 Rule 9(b).

10 For these reasons, Plaintiffs' complaint cannot be
11 dismissed on the ground that it did not allege a duty of
12 disclosure or that it did not allege fraud with particularity.

13 C. Concealment

14 Defendant argues that Plaintiffs fail to state a CLRA claim
15 because they do not allege any affirmative misrepresentations by
16 Defendant.

17 Citing Outboard Marine Corp. v. Superior Court, 52 Cal.
18 App. 3d 30, 36. (1975), Plaintiffs argue that concealment of
19 design defects is prohibited by the CLRA. In Outboard Marine,
20 the plaintiff brought a class action alleging that the
21 defendant, a manufacturer, fraudulently concealed a design
22 defect in its vehicles. Id. at 34. The plaintiff also brought
23 a second cause of action, alleging that the defendant made
24 fraudulent misrepresentations about certain specifications of
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1 the vehicle in violation of the CLRA. Id. The defendant moved
2 to dismiss the first cause of action on the ground that it was
3 covered by the CLRA. Id.³ The trial court denied the motion.
4 The court of appeal held that the motion to dismiss should have
5 been granted because the CLRA provided the exclusive remedy for
6 conduct encompassed by the act and the first cause of action was
7 based on the same conduct as that alleged in the second cause of
8 action. The court concluded that because "an active concealment
9 has the same force and effect as a representation," the CLRA
10 includes a proscription against "a concealment of the
11 characteristics, use, benefit, or quality of the goods contrary
12 to that represented." Id. at 37.

15 Defendant seeks to distinguish Outboard Marine by noting
16 that the plaintiff, unlike Plaintiffs in this case, alleged that
17 the defendant made positive misrepresentations in addition to
18 concealing facts. Defendant argues that Plaintiffs have not
19 alleged that Defendant made any misrepresentations about the
20 durability of its intake manifolds. Defendant also argues that
21 by using the word "representing" in § 1770(a)(5) and (7), the
22 legislature meant affirmative misrepresentations and not
23 concealment. Defendant further supports this interpretation by
24

26 ³ At the time this case was decided, the CLRA provided the
27 exclusive remedy for conduct encompassed by the act. Section
28 1752 now provides that the CLRA is not an exclusive remedy.

1 noting that § 1770(a)(21)⁴ provides that the failure to disclose
2 certain characteristics of "grey market goods" is a violation of
3 the CLRA. Defendant argues that because the legislature
4 included concealment in one provision of the CLRA and did not do
5 so in another related one, the legislature intended to make
6 concealment actionable only in the case of "grey market goods."

7
8 Defendant's arguments are unpersuasive. First, although
9 Defendant is correct that the plaintiff in Outboard Marine,
10 unlike Plaintiffs in this case, alleged that the defendant made
11 positive misrepresentations, this distinction does not affect
12 the court's determination that concealment of product defects is
13 equivalent to misrepresentation for the purpose of analyzing
14 claims brought under CLRA.

15
16 Second, Defendant's attempt to infer legislative intent
17 from Chapter 4 of Title 1.7 (Consumer Warranties) is

18
19 ⁴ Section 1770(a)(21) prohibits the "[s]elling or leasing
20 goods in violation of Chapter 4 (commencing with Section 1797.8)
of Title 1.7."

21 Section 1797.81 provides that "[e]very retail seller who
22 offers grey market goods for sale shall post a conspicuous sign
at the product's point of display and affix to the product or
23 its package a conspicuous ticket, label, or tag disclosing"
certain characteristics about the product (e.g., the item is not
covered by manufacturer's express written warranty).

24 "Grey market goods" means "consumer goods bearing a
trademark and normally accompanied by an express written
25 warranty valid in the United States of America which are
imported into the United States through channels other than the
26 manufacturer's authorized United States distributor and which
are not accompanied by the manufacturer's express written
27 warranty valid in the United States." Cal. Civ. Code §
1797.8(a).

1 unpersuasive. Title 1.7 is not part of the CLRA, and it does
2 not contain the word "conceal" or "concealment." The CLRA
3 merely incorporates Chapter 4 of Title 1.7 to prohibit certain
4 acts and practices in the sale of grey market goods. The
5 relationship between the CLRA and Chapter 4 is too attenuated to
6 infer the legislative intent of the terms in the CLRA from
7 language in Chapter 4.

8
9 Nothing in the CLRA indicates that concealment is not the
10 legal equivalent of misrepresentation. Rather, the statute
11 specifically provides that it shall be "liberally construed" to
12 promote its underlying purposes, which include protection of
13 consumers against unfair and deceptive business practices. Cal.
14 Civ. Code § 1760. Liberally construed, the CLRA's proscription
15 against unfair and deceptive business practices encompasses
16 Defendant's alleged concealment of product defects.

17
18 Even if concealment were not actionable under the CLRA,
19 Plaintiffs' complaint has alleged sufficient facts to show that
20 Defendant represented that its vehicles would be of a particular
21 quality that they are not. In the complaint, Plaintiffs allege
22 that Defendant "warranted, advertised, distributed, and sold"
23 its automobiles. In this way, Defendant represented that its
24 cars would be of sufficient quality for normal use, and
25 Plaintiffs bought the cars with the expectation that the cars
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1 would be suitable for normal use. Plaintiffs allege that the
2 intake manifolds in the Subject Automobiles "did not perform in
3 accordance with the reasonable expectations of Plaintiffs and
4 the Class--namely, that the automobiles were suitable for normal
5 use as a passenger vehicle." Compl. at ¶ 8. Therefore,
6 Defendant allegedly represented that its vehicles would be of a
7 quality suitable for normal use even though they were not.

8
9 Cases cited by Defendant to support the proposition that
10 concealment is not actionable under CLRA are inapt. In Vess v.
11 Ciba-Geigy Corp., a plaintiff sued the maker of Ritalin and two
12 non-profit organizations for conspiring to increase sales of the
13 drug in violation of the CLRA. 2001 WL 290333 at *2 (S.D. Cal.,
14 Mar. 9, 2001), aff'd in relevant part, 317 F.3d 1097 (9th Cir.
15 2003). The court found that the non-profit organizations did
16 not market or sell the product, there was no transaction between
17 them and the plaintiff, and there was no allegation that the
18 plaintiff saw or relied on the organizations' advertisements or
19 that they made misrepresentations. Id. at 12, 16. For these
20 reasons, the court granted the non-profit organizations' Rule
21 12(b)(6) motion to dismiss the CLRA claim. The court did not
22 hold that concealment is not actionable under the CLRA.

23
24 In Bescoes v. Bank of America, a plaintiff who leased a
25 vehicle brought an action against the automobile dealer and the
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1 bank that financed the lease. 105 Cal. App. 4th 378, 382
2 (2003). The plaintiff claimed that the bank was liable under
3 the CLRA for failing to include a certain notice in its lease
4 agreement as required by federal law. Id. at 385. The court
5 rejected the plaintiff's CLRA claim because the federal law did
6 not apply to his case and the bank therefore did not engage in a
7 deceptive practice by not including the notice. Id. at 395.
8 The court did not hold that concealment is not actionable under
9 the CLRA.
10

11 Therefore, the CLRA claim cannot be dismissed on this
12 basis.
13

14 D. Transaction

15 Defendant contends that because Plaintiffs bought used
16 vehicles and did not buy them from Defendant, they fail to state
17 a CLRA claim in that they have not alleged that they entered
18 into a transaction with Defendant.
19

20 As stated above, the CLRA prohibits "unfair methods of
21 competition and unfair or deceptive acts or practices undertaken
22 by any person in a transaction intended to result or which
23 results in the sale or lease of goods or services to any
24 consumer." Cal. Civ. Code § 1770(a). The CLRA defines
25 "transaction" to mean "an agreement between a consumer and any
26 other person, whether or not the agreement is a contract
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1 enforceable by action, and includes the making of, and the
2 performance pursuant to, that agreement." Cal. Civ. Code §
3 1761(e).

4 Defendant argues that the California Legislature intended
5 the CLRA to apply only to a defendant's alleged unlawful action
6 in the context of a transaction between the plaintiff and the
7 defendant. As originally introduced in the legislature, the
8 language of § 1770 proscribed "unfair methods of competition and
9 unfair or deceptive practices undertaken by any person in the
10 conduct of any trade or commerce" Assembly Bill 292,
11 Regular Session (Cal. Jan. 21, 1970) (emphasis added). An
12 amended version of the bill replaced "conduct of any trade or
13 commerce" with "sale or lease of goods to any consumer."
14 Amended Assembly Bill 292, Regular Session (Cal. May 22, 1970).
15 Defendant argues that this change demonstrates that the
16 legislature intended to restrict the CLRA's ambit to unlawful
17 practices of a seller in a transaction with a buyer.
18
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20

21 However, before the bill was passed, the legislature also
22 inserted another phrase: "a transaction intended to result or
23 which results in." Thus, the legislature expanded the range of
24 illegal acts and practices to include those "undertaken by any
25 person in a transaction intended to result or which results in
26 the sale or lease of goods or services to any consumer."
27
28

1 Nothing in the language of the CLRA states that only a defendant
2 who directly engaged in a completed transaction with a plaintiff
3 may be liable to that plaintiff. Viewed in light of the
4 provision to construe the statute liberally, the broad language
5 of the statute suggests that the legislature intended the CLRA
6 to cover a wide range of business activities.

8 In support of its argument, Defendant relies on Vess, 2001
9 WL 290333 at *2, and Boyd v. Keyboard Network Magazine, 2000 WL
10 274204 at *3 (N.D. Cal.), aff'd, 246 F.3d 672 (9th Cir. 2000).
11 In Vess, the CLRA claim against the non-profit organizations was
12 dismissed partly because they were not engaged in any business
13 transactions with the plaintiff. In Boyd, the plaintiff, who
14 was wronged by a company that made a false advertisement, sued
15 the publisher of that advertisement. 2000 WL 274204 at *3. The
16 court dismissed the CLRA claim for failing to allege a
17 transaction because the publisher never intended to sell goods
18 or services to the plaintiff. Id.

21 The present case is distinguishable from Vess and Boyd.
22 Neither the non-profit organizations in Vess nor the publisher
23 in Boyd manufactured goods for sale, provided services, or
24 intended to sell goods or provide services to any consumers. In
25 contrast, here Defendant is a manufacturer of automobiles which
26 it intends to and does sell to consumers. Plaintiffs' complaint
27

1 alleges that they bought a 1996, a 1997, and a 1998 model of the
2 Subject Automobiles, that Defendant knew of the defective intake
3 manifolds "no later than January 1, 1997, and possibly earlier,"
4 and that Defendant, "through its own efforts and through its
5 network of authorized dealerships acting as its agents,"
6 "warranted, advertised, distributed, and sold its automobiles
7 throughout the state of California." Compl. at ¶¶ 4, 12, 13,
8 14, 16. Therefore, Defendant allegedly knew of and concealed
9 the defects in its Subject Automobiles at the time it engaged in
10 transactions that were "intended to result or which results in
11 the sale or lease of goods or services to any consumer." Cal.
12 Civ. Code § 1770(a). Among the sales of goods to consumers,
13 that resulted from the transactions in which Defendant engaged,
14 were the subsequent resales of Subject Automobiles to
15 Plaintiffs.

16
17 For these reasons, Defendant's alleged concealment of
18 product defects from Plaintiffs constitutes a transaction
19 actionable under the CLRA and the complaint cannot be dismissed
20 on this ground.

21
22 E. Restitution

23 Defendant argues that because Plaintiffs are not entitled
24 to restitution or damages under the UCL, that claim should be
25 dismissed. Plaintiffs contend that they properly requested
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1 restitution under the UCL.

2 In Kraus v. Trinity Mgmt. Servs., the court found that the
3 California Legislature has not expressly authorized monetary
4 relief other than restitution in UCL actions. 23 Cal. 4th 116,
5 138 (2000). The court defined an order for restitution as one
6 "compelling a UCL defendant to return money obtained through
7 unfair business practice to those persons in interest from whom
8 the property was taken, that is, to persons who had an ownership
9 interest in the property or those claiming through that person."
10 Id. at 126-127. The court concluded that although disgorgement
11 into a fluid recovery fund⁵ is not an available remedy under the
12 UCL for representative actions, the legislature has "authorized
13 disgorgement into a fluid recovery fund in class actions." Id.
14 at 138.

15 In Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th
16 1134 (2003), the Republic of Korea solicited bids from several
17 manufacturers of military equipment. The plaintiff represented
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22 ⁵ "Fluid recovery" refers to "the application of the
23 equitable doctrine of cy près in the context of a modern class
24 action. The implementation of fluid recovery involves three
25 steps. First, the defendant's total damage liability is paid
26 over to a class fund. Second, individual class members are
27 afforded an opportunity to collect their individual shares by
28 proving their particular damages, usually according to a lowered
standard of proof. Third, any residue remaining after
individual claims have been paid is distributed by one of
several practical procedures that have been developed by the
courts." Kraus, 23 Cal. 4th at 127 (citations and quotation
marks omitted).

1 a company that lost the bid. Id. at 1140. The plaintiff, who
2 would have received a commission had the company it represented
3 won the bid, sued the defendant under the UCL because it
4 allegedly won the bid by bribing Korean officials. Id. One
5 issue before the court was "whether disgorgement of profits
6 allegedly obtained by means of an unfair business practice is an
7 authorized remedy under the UCL where these profits are neither
8 money taken from a plaintiff nor funds in which the plaintiff
9 has an ownership interest." Id. The court concluded that the
10 plaintiff was not seeking return of money or property that was
11 once in its possession but was seeking return of the profit the
12 defendant received from the Republic of Korea, and that
13 "disgorgement of such profits is not an authorized remedy in an
14 individual action under the UCL." Id. at 1140, 1149. However,
15 direct victims of unfair competition may obtain restitution.
16 Id. at 1152.

17
18
19 Relying on Kraus, Plaintiffs argue that Korea Supply
20 limited only direct victims in representative actions to a
21 restitution remedy. Plaintiffs suggest that in class actions,
22 disgorgement into a fluid recovery fund is an available remedy
23 under the UCL, even for indirect victims. Plaintiffs are
24 incorrect. The Kraus court noted that disgorgement into a fluid
25 recovery fund is an available remedy for class actions, but the
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1 court also concluded that restitution is the only monetary
2 remedy available under the UCL. 23 Cal. 4th at 138. Thus,
3 although a court may order disgorgement into a fluid recovery
4 fund under the UCL for a class action, a plaintiff may recover
5 money from this fund only to the extent that the recovery is
6 restitutionary.
7

8 In the present case, Plaintiffs, as used car purchasers,
9 have not alleged that they paid any money to Defendant.
10 Plaintiffs are not direct victims who seek the return of money
11 that was taken from them by Defendant. Therefore, the remedy
12 that Plaintiffs seek is not restitutionary and their claim for
13 restitution under the UCL is dismissed.
14

15 In their prayer for relief, Plaintiffs request any other
16 relief that may be appropriate. Under the UCL, Plaintiffs may
17 seek injunctive relief. Therefore, Plaintiffs are given leave
18 to amend to make a UCL claim for injunctive relief if they wish
19 to do so.
20

21 CONCLUSION

22 For the foregoing reasons, Defendant's motion to dismiss
23 (Docket #7) is GRANTED IN PART. Plaintiffs' UCL claim is
24 dismissed with leave to amend in accordance with this order.
25 Defendant's motion to dismiss Plaintiffs' CLRA claim is DENIED.
26 Plaintiffs may file their amended complaint within ten days from
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1 the date of this order. Defendant shall respond to Plaintiffs'
2 complaint within twenty days thereafter. If Defendant files a
3 motion to dismiss Plaintiffs' amended complaint, Defendant shall
4 notice it for October 3, 2003 at 10 a.m. In that event, the
5 Case Management Conference scheduled for October 3, 2003 will
6 also be held at
7 10 a.m.

8
9 IT IS SO ORDERED.

10
11 Dated: 8/6/03

12 /s/ CLAUDIA WILKEN
13 CLAUDIA WILKEN
14 United States District Judge
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